

Today is Tuesday, January 24, 2017



Republic of the Philippines  
**SUPREME COURT**  
 Manila

EN BANC

**G.R. No. L-23563      May 8, 1969**

**CRISTINA SOTTO**, plaintiff-appellee,  
 vs.  
**HERNANI MIJARES, ET AL.**, defendants-appellants.

*Arboleda and Arboleda for plaintiff-appellee.  
 Eugenio T. Sanicas for defendants-appellants.*

**MAKALINTAL, J.:**

This is an appeal taken by herein defendants from that portion of the order of the Court of First Instance of Negros Occidental dated March 20, 1963 in its Civil Case No. 6796 which requires them to deposit with the Clerk of Court the amount of P5,106.00 within ten (10) days from receipt of said order. Originally appealed to the Court of Appeals, this case was subsequently certified to this Court, the only issue being one of law.

In the aforesaid Civil case <sup>1</sup> plaintiff filed a "Motion for Deposit" on November 13, 1962, the pertinent portions of which read:

2. That in accordance with the contract including the allied transactions as evidenced by other documents, the balance indebtedness of the defendants in favor of the plaintiff is the amount of P5,106.00 only, Philippine Currency ...;
3. That according to the answer of the defendants, the said claim of P5,106.00 is admitted ..., with the defendants further alleging that they have offered the said amount to the plaintiff who refused to receive the said amount;
4. That in view of the admission of the defendants of the same and in order to limit the other controversial issue ... it is fitting and proper that the said amount of P5,106.00 be deposited in the Office of the Clerk of Court of this province or to deliver the same to the plaintiff and/or her counsel.

Defendants, in their "Opposition" dated November 23, 1962, signified their willingness to deposit the requested amount provided that the complaint be dismissed and that they be absolved of all other liabilities, expenses and costs.

On November 26, 1962 the lower court issued the following order:

It appearing that the defendants have admitted the claim of the plaintiff in the sum of P5,106.00, as prayed for by the counsel for the plaintiff the said defendants are hereby ordered to deposit said amount to the Clerk of Court pending the final termination of this case.

On November 28, 1962 plaintiff — this time represented by new counsel — filed a motion for partial judgment on the pleadings with respect to the amount of P5,106.00, modifying their previous request for judicial deposit, which had already been granted. On the other hand, defendants moved to reconsider the order of November 26, explaining that through oversight they failed to allege in their "Opposition" that the sum of P5,106.00 was actually secured by a real estate mortgage. They would thus premise their willingness to deposit said amount upon the condition "... that the plaintiff will cancel the mortgage abovementioned and that the plaintiff be ordered to return to the defendants Transfer Certificate of Title No. 29326 covering Lot No. 327 of Pontevedra and Transfer Certificate of Title No. 29327 covering Lot No. 882 of Hinigaran Cadastre, Negros Occidental."

On March 20, 1963 the lower court resolved both motions, in effect denying them and reiterating its previous order, as follows:

WHEREFORE, the motion for partial judgment on the pleadings dated November 28, 1962 is hereby denied but in its stead the defendants are hereby ordered to deposit with the Clerk of Court the amount of P5,106.00 within ten (10) days from receipt of this order subject to further disposition thereof in accordance with the decision to be rendered after trial.

It is the foregoing order from which the present appeal has been taken. Since this case was submitted upon the filing of the briefs, there has been no showing as to the outcome of the main case below for foreclosure of mortgage. The decision therein, if one has been rendered, since no injunction was sought in or granted by this Court, must have rendered this appeal moot and academic, considering that the defendants admit their indebtedness to the plaintiff but object merely to their being compelled to deposit the amount thereof in court during the pendency of the foreclosure case. However, no manifestation having been received on the matter, we shall proceed to the issues raised by the parties.

The first of said issue is procedural, and has been set up by the appellee as a roadblock to this appeal. She maintains that the controverted order is interlocutory, since it does not dispose of the case with finality but leaves something still to be done, and hence is unappealable. The remedy, it is pointed out, should have been by petition for *certiorari*. The point, strictly speaking, is well taken; but this Court sees fit to disregard technicalities and treat this appeal as such a petition and consider it on the merits, limiting the issue, necessarily, to whether or not the court below exceeded its jurisdiction or committed a grave abuse of discretion in issuing the order complained of.

The defendants admit their indebtedness to the plaintiff, but only in the sum of P5,106.00. It seems that the controversy refers to the plaintiff's additional claim for interest, attorney's fees and costs.

The defendants expressed their willingness to deposit the said amount in court, subject to the condition that the mortgage they had executed as security be cancelled. The question, then, is: Did the court act with authority and in the judicious exercise of its discretion in ordering the defendants to make the deposit but without the condition they had stated? Whether or not to deposit at all the amount of an admitted indebtedness, or to do so under certain conditions, is a right which belongs to the debtor exclusively. If he refuses he may not be compelled to do so, and the creditor must fall back on the proper coercive processes provided by law to secure or satisfy his credit, as by attachment, judgment and execution. From the viewpoint of the debtor a deposit such as the one involved here is in the nature of consignation, and consignation is a facultative remedy which he may or may not avail himself of. If made by the debtor, the creditor merely accepts it, if he wishes; or the court declares that it has been properly made, in either of which events the obligation is ordered cancelled. Indeed, the law says that "before the creditor has accepted the consignation or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force."<sup>2</sup> If the debtor has such right of withdrawal, he surely has the right to refuse to make the deposit in the first place. For the court to compel him to do so was a grave abuse of discretion amounting to excess of jurisdiction.

The order appealed from is set aside, without pronouncement as to costs.

*Reyes, J.B.L., Dizon, Zaldivar, Sanches, Fernando, Teehankee and Barredo, JJ., concur.  
Capistrano, J., took no part.  
Concepcion, C.J., and Castro J., are on leave.*

#### Footnotes

<sup>1</sup>Civil Case No. 6796 is a proceeding to foreclose a real estate mortgage earlier executed by defendants in favor of plaintiff in consideration of a P5,000.00 loan which the former had allegedly failed to pay.

<sup>2</sup>Art. 1260, Civil Code.